

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID TOPETE-DIAZ, a/k/a
Pablo Topete-Diaz,

Defendant.

No. 06-CR-4003-DEO

**ORDER REGARDING REPORT AND
RECOMMENDATION CONCERNING
GUILTY PLEA**

I. INTRODUCTION AND BACKGROUND

On January 19, 2006, a one Count Indictment (Docket No. 1, 01/19/2006) was returned against defendant David Topete-Diaz, a/k/a Pablo Topete-Diaz.

Count 1 of that Indictment charges that the defendant, David Topete-Diaz, on or about January 18, 2006, in the Northern District of Iowa, was an alien who had been previously removed and deported on August 21, 2002, who was found, knowingly and unlawfully, in the United States, in Sioux County, Iowa, after re-entering the United States without first obtaining the consent to apply for readmission in to the United States from either the United States Attorney General or Secretary for Homeland Security, all in violation of Title 8, United States Code, Section 1326(a). Notice was

provided in the Indictment that David Topete-Diaz, a/k/a Pablo Topete-Diaz, was convicted on July 24, 2001, in the Iowa District Court for Sioux County of delivery of cocaine and sentenced to 10 years in prison. Pursuant to Title 8, United States Code, Section 1326(b), this prior conviction increases the maximum statutory sentence that can be imposed upon a conviction for this charge.

On March 6, 2006, defendant David Topete-Diaz, a/k/a Pablo Topete-Diaz appeared before United States Magistrate Judge Paul A. Zoss and entered a plea of guilty to Count 1 of the Indictment. On the same date, United States Magistrate Judge Zoss filed a Report and Recommendation (Docket No. 17, 03/06/2006) in which he recommends that defendant David Topete-Diaz, a/k/a Pablo Topete-Diaz's guilty plea be accepted. No objections to Judge Zoss's Report and Recommendation were filed. The Court, therefore, undertakes the necessary review of Judge Zoss's recommendation to accept defendant David Topete-Diaz's plea in this case.

II. ANALYSIS

A. Standard of Review

Pursuant to statute, this Court's standard of review for

a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's Report and Recommendation on dispositive motions and prisoner petitions, where objections are made as follows:

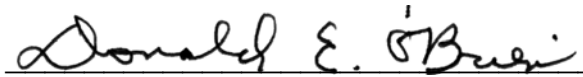
The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommendation decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

In this case, no objections have been filed, and it appears to the Court upon review of Judge Zoss's findings and conclusions that there are no grounds to reject or modify them. Therefore, the Court accepts Judge Zoss's Report and Recommendation (Docket No. 17), and accepts defendant's plea

of guilty in this case to Count 1 of the Indictment filed on
January 19, 2006.

IT IS SO ORDERED this 16th day of May, 2006.

A handwritten signature in cursive script, reading "Donald E. O'Brien", is written over a horizontal line.

Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa